

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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## 26. How long should the outcome of the investigation remain on the employee's record?

### Germany

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at Hengeler Mueller

If there is no special statutory storage period (which is the case for investigative reports and findings), personal data may only be stored for as long as is necessary for the purposes for which they are collected. As soon as the data is no longer required, it must be deleted. In connection with workplace investigations, the question arises as to how this obligation to delete personal data relates to the company's corporate interests. From the company's perspective, there may well be legitimate interests that speak in favour of retaining existing data for as long as possible. Under the data protection regulations of the DSGVO and the BDSG, data can be stored for as long as it is required for the assertion, exercise or defence of (civil) legal claims. This means that the data can, in any event, be saved at least as long as any measures related to the workplace investigation have not yet been completed and any legal disputes have not yet been concluded.

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### Ireland

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at Ogier

Irrespective of the outcome of the investigation, the fact that an employee was subject to an investigation is not the key issue. The key concern is whether any further action was taken as a result of the investigation. If a disciplinary process ensued, then it is the outcome of that disciplinary record and any subsequent appeal that would or would not be noted on an employee's record. If a disciplinary sanction were imposed then the length of time the sanction remains on the employee's record would depend on what is specified in the disciplinary policy.

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From an employment law point of view, there is no statute of limitations on the employee's violations. Based on the specific circumstances (eg, damage incurred, type of violation, basis of trust or the position of the employee), a decision must be made as to the extent to which the outcome should remain on the record.

From a data protection point of view, only data that is in the interest of the employee (eg, to issue a reference letter) may be retained during the employment relationship. In principle, stored data must be deleted after the termination of the employment relationship. Longer retention may be justified if rights are still to be safeguarded or obligations are to be fulfilled in the future (eg, data needed regarding foreseeable legal proceedings, data required to issue a reference letter or data in relation to a non-competition clause).<sup>[1]</sup>

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<sup>[1]</sup> Wolfgang Portmann/Isabelle Wildhaber, *Schweizerisches Arbeitsrecht*, 4. Edition, Zurich/St. Gallen 2020, N 473.

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